

From: [MORGAN Jackson * DSL](#)
To: [Tatiana Burgess](#)
Subject: Public comment for Malheur County Planning Department File No. 2023-12-010
Date: Wednesday, February 21, 2024 6:45:49 PM
Attachments: [Public Comment for Malheur County Planning Department File No. 2023-12-010.docx](#)

Good evening Tatiana,

Please accept the attached comment related to Malheur County Planning Department File No. 2023-12-010 ahead of the planned public meeting tomorrow (2/22) at 7:30PM.

Should you have any additional questions, please feel free to reach out.

Thanks,

Jackson Morgan

Aquatic Resource Coordinator

Oregon Department of State Lands – Bend Office

Work Schedule: M-Th 6:30am – 5pm, Friday – Off

Jackson.morgan@dsl.oregon.gov

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Oregon

Tina Kotek, Governor

Department of State Lands

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State Land Board

2/21/2024

Tina Kotek

Governor

Malheur County Planning Department

ATTN: Tatiana Burgess

251 B Street West #12

Vale Oregon 97601

LaVonne Griffin-Valade

Secretary of State

Re: Planning Department File No. 2023-12-010

Tobias Read

State Treasurer

Ms. Burgess:

The Oregon Department of State Lands wishes to submit a public comment regarding Planning Department file no. 2023-12-010. Based upon initial review of the site, it appears there may be State jurisdictional features present including a \pm 0.77 acre riverine wetland that is mapped in the eastern portion of the property per the National Wetlands Inventory (NWI) and National Hydrography Dataset (NHD). Wetlands are considered Waters of this State, and any impacts greater than 50 cubic yards of removal or fill would require a permit from the Department. While we acknowledge desktop resources (NWI & NHD) may be inaccurate, further investigation is needed to determine whether a State jurisdictional feature is present.

The Department would also like to address the following statement made in Exhibit 23, Section 5 submitted by Mr. Brian Sheets, Legal Counsel for the applicant. *"...nor is it a "wetland" within the definition because the plant species are not aquatic plants. There is no aquatic ecosystem, and minor ponding on caliche does not make a wetland."* Wetlands are identified using a combination of soil, hydrology, and vegetation data as described in the 1987 Army Corps of Engineers Wetland Delineation Manual. Section 5 of the 2008 Arid West Regional Supplement, used in conjunction with the Army Corps of Engineers Wetland Delineation Manual, highlights problematic situations that may arise for wetlands in the Arid West, including problematic hydrophytic vegetation. There are many factors that may contribute to a lack of typical hydrophytic vegetation, but there are established processes to determine if an area in question is still considered wetland. Simply put, a lack of hydrophytic vegetation does not necessarily mean that there are not wetlands present, but that further investigation may be warranted.

The Department does acknowledge the potential economic benefits associated with this type of development in Malheur County. However, a removal-fill permit may be needed according to State law and failure to obtain necessary permits may result in an enforcement action. To prevent a potential enforcement action which will delay construction, the Department recommends the applicant hire a

qualified wetland professional to prepare a wetland delineation report and submit to the Department for review and approval as soon as feasible.

If you have questions or would like to discuss permitting requirements further, please feel free to contact me at 541-640-2997.

Sincerely,

A handwritten signature in cursive script that reads "Jackson Morgan".

Jackson Morgan
Aquatic Resource Coordinator
Aquatic Resource Management
Oregon Department of State Lands